**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**O. O. C. J.**

COMPANY APPEAL NO.28 OF 2005
IN
COMPANY APPLICATION NO.366 OF 2004

Mr. L.N. Prayaga & Ors. ...Appellants.
Vs.
The Company Law Board & Ors. ...Respondents.

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Mr.Chaturvedi i/b. Chaturvedi & Asso. for the Appellants.
Mr.Pankaj Sawant with Ms. Ruchi Soni i/b. Joy Legal for the Respondent.

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**CORAM :DR.D.Y.CHANDRACHUD, J.**
April 21, 2007.

**P.C.**:

The appeal under Section 10F of the Companies' Act, 1956, arises out of an order of the Company Law Board ("CLB") dated 18th January 2005. A petition under Sections 397 and 398 of the Act, was instituted by Respondent Nos.8 to 11. In the Petition, a direction was inter alia sought to Respondent Nos.3 to 7 to transfer 2209 equity shares held by them in the Second Respondent at a valuation to be determined in accordance with the directions of the CLB, in terms of Article 22 of the Articles of Association of the Company and a letter of offer dated 28th July

2003. Other reliefs were also sought to which it is not necessary to refer in a considerable degree of detail at the present stage.

2. On 23rd December 2003, the CLB passed orders appointing a valuer to determine the fair value of the equity shares of the Company. A report was submitted upon which the objections of Respondent Nos.3 to 7 on the one hand, and Respondent Nos.8 to 11 on the other, were heard. An order was passed on 5th October 2004 by the CLB which disposed of the petition. Upon considering the objections to valuation by which the fair value of each share was determined at Rs.2,876/- per share, the Board directed that the consideration should be paid on or before 31st October 2004 against which the vendors, Respondent Nos.3 to 7, were to hand over the share certificates together with instruments of transfer. The vendors had alleged that they had furnished a loan to the Company in addition to which certain other amounts were stated to be due on account of unpaid salary, commission and other heads. The CLB ordered that these amounts should also be paid by Respondent Nos.8 to 11 by the

same date and any personal guarantee furnished by Respondent No.3 or his group in connection with the affairs of the Company should also be released. On 19th October 2004, a letter was addressed by Respondent No. 8 and his group, calling upon Respondent Nos.3 to 7 to collect the consideration and hand over the share certificates together with blank transfer forms. Respondent Nos.3 to 7, however, raised a contention that there were other obligations which were required to be fulfilled by the purchasers under the order of the CLB. Thereupon, sometime in November 2004, Respondent Nos.8 to 11 instituted an application before the Board (Company Application 366 of 2004) for an order, directing implementation of the earlier order passed on 5th October 2004. The application was allowed by an order dated 18th January 2005 which is impugned in these proceedings.

3. The impugned order of the CLB dated 18th January 2005 records in the list of appearances, the presence of the Advocate appearing on behalf of the Appellants. Each of the Appellants holds one share in the Company. While disposing of the application filed

by Respondent Nos. 8 to 11 for implementation of the earlier order dated 5th October 2004, the CLB noted that one of the objections of Respondent Nos. 3 to 7 was that their shares had been sold to other shareholders at a consideration of Rs.4,439/- per share. Subsequently, however, during the course of the hearing, Respondent Nos. 3 to 7 agreed to fulfill the transaction with Respondent Nos. 8 to 11 in terms of the directions dated 5th October 2004 and an amount of Rs. 63.53 lakhs was handed over as consideration for the shares that were sold to Respondent Nos. 8 to 11. Respondent No.8 and his group undertook to release Respondent No.3 from all his personal guarantee.

4. The order of the CLB has been duly implemented. Neither the vendors of the shares (Respondent Nos. 3 to 7), nor the purchasers (Respondent Nos. 8 to 11) have raised any objection or challenge to the order. The valuation determined by the CLB was accepted both by the vendors and the purchasers. The order is challenged by the Appellants each of whom holds one share in the Company.

5. In so far as the Appellants are concerned, it would be material to note that on 16th February 2004, Miscellaneous Applications 298 to 312 of 2004 were instituted by them and 11 others each of whom held one share in the Company. Besides seeking impleadment in the petition filed by Respondent Nos. 8 to 12, the Applicants sought a direction to Respondent Nos. 8 to 12 to acquire their equity shares (12 shares in all) together with equity shares of Respondent Nos. 3 to 7 in the event that the decision of the CLB was for the acquisition of the shares by Respondent No.8 and his group. On 14th October 2004, an order was passed by the CLB on the aforesaid applications in the following terms:

> "The Application mentioned. I have advised the Counsel for the Petitioner to buy out the Applicant's shares which accounts to only 15 shares. In case the Petitioners are not willing, then the application will be heard on 8.11.2004 at 4.30 PM."

Subsequently, on 6th December 2004, the CLB passed a further order noting that Respondent Nos. 8 to 11 were willing to buy the 15 shares of the intervenors at the value which was already fixed

by the Board. In the meantime, the Respondents were directed not to create any third party interest or to transfer 2209 shares to any other party. The Appellants had instituted a petition under Sections 397 and 398 on 29th October 2004 inter alia seeking a direction to Respondent Nos. 3 to 7 to transfer their shares to the Appellants. This Company Petition was withdrawn by the Appellants on 6th December 2004.

6. On behalf of the Appellants, the order of the CLB has been assailed on the ground that by the earlier order dated 5th October 2004, the transaction between Respondent Nos.3 to 7 on the one hand, and Respondent Nos. 8 to 11 on the other, was to be completed on or before 31st October 2004. The submission is that upon a failure of the parties to complete the transaction by that date, an agreement was entered into by Respondent No.3 and his group with the Appellants on 1st November 2004 under which the Appellants were to acquire the shares at a consideration of Rs.4,439/- per equity share. It is urged that the Appellants had moved an intervention application in the Company Petition

instituted by Respondent Nos.8 to 12 notwithstanding which the CLB passed a final order on 18th January 2005 directing implementation of the earlier order of 5th October 2004. Respondent Nos.3 to 7, it is urged, had objected to the application filed by Respondent Nos.8 to 12 on the ground that they had, in the meantime, sold their shares to the Appellants and the eventual direction confirming in the sale to Respondent Nos.8 to 12 had the effect of nullifying the transaction with the Appellants. The Appellants have set up the case that Respondent Nos. 3 to 7 had, in turn, entered into an agreement with them for the sale of the shares on 1st November 2004 and it was as a result of that agreement that they withdrew their Company Petition under Sections 397 and 398.

7. In considering the submission which has been urged on behalf of the Appellants, it would merit emphasis that each of the Appellants has a holding of one share in the Second Respondent. The Appellants had, in fact, taken out an application for impleadment in the Company Petition instituted by Respondent

No.8 and his group under Sections 397 and 398 of the Companies' Act, 1956. The substantive prayer in the application was that Respondent Nos.8 to 12 should be directed to acquire the equity shares held by the Appellants in the event that the CLB held that the shares of Respondent Nos.3 to 7 were to be transferred to Respondent Nos.8 to 11. Therefore, it merits emphasis that the only relief that each of the Appellants sought was for the purchase of their individual holding of one share each. At that stage, neither of the Appellants advanced a substantive contention that they were willing to acquire the shares that were for sale.

8. During the pendency of the proceedings instituted by Respondent No.8 and his group, the CLB ordered a valuation to be carried out and after hearing the objections of the contesting parties arrived at a fair valuation of the share of the Company at Rs.2,876/- per share. The order dated 5th October 2004 was not challenged by any party, or for that matter by the Appellants themselves. The order dated 5th October 2004 cannot be treated as laying down a final or unalterable cut off date of 31st October

2004 for completing the transaction between Respondent Nos. 3 to 7 on the one hand, and Respondent Nos.8 to 11 on the other, as the order itself would show that a verification was required to be carried out of the loan which was allegedly furnished and of the claim of Respondent No.3 towards unpaid salary, commission etc. When the Appellants entered into an agreement with Respondent No.3, clause 1 of the agreement expressly provided that an order will have to be obtained from the CLB for the sale of shares of Respondent No.3. Clauses 9 and 10 of the agreement stipulate that certain further steps would be taken after the order of the CLB in terms of clause 1. The Appellants, however, withdrew their substantive Company Petition under Sections 397 and 398 on 6th December 2004. By withdrawing the Company Petition, the Appellants must be construed to have given up their entitlement, if any, in pursuance of the agreement dated 1st November 2004, clause 1 of which specifically provided that the approval of the CLB would have to be obtained. In these circumstances, the Appellants cannot now be heard to complain of the order passed by the CLB on 18th January 2005. The order of 18th January 2005

only reaffirmed the implementation of the directions contained in the earlier order dated 5th October 2004.

9. On their part, the Appellants have chosen not to disclose before this Court either the order dated 14th October 2004 or the order dated 6th December 2004 which was passed by CLB suggesting that the individual shares of the Appellants can be purchased by Respondent No.8 and his group at the valuation which was determined in the order dated 5th October 2004. Counsel appearing on behalf of Respondent Nos.8 to 12 has reiterated before the Court that his client is ready and willing to purchase the shares of the Appellants at the valuation determined by the CLB in its order dated 5th October 2004.

10. For all these reasons, there is no merit in the Appeal. The appeal shall accordingly stand dismissed.

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